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NO. 68342-0-I

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

GORDON WOODLEY, Appellant,

vs.

USAA CASUALTY INSURANCE COMPANY, Respondent.

RESPONDENT'S BRIEF

Gregory J. Wall
WSBA 8604
Wall & Liebert P.S.
1521 SE Piperberry Way
Suite 102
Port Orchard, WA 98366
(360) 876-1214
Attorney for Respondent

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COURT OF APPEALS
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I.
INTRODUCTION

Gordon Woodley is seeking to be paid attorney fees for the representation of Tara Hanoch, a person insured by USAA, even though he was never retained by USAA. Mr. Woodley was retained on a contingent fee basis by Ms. Hanoch to pursue her personal injury claim. He was paid over \$35,000 for his representation. He is suing USAA in an attempt to be paid twice for the same work. Appellant is apparently not planning to reimburse his client if he is successful in his claim against USAA. Mr. Woodley admits that he had no contract with USAA, that the last work he did on the file was in January 2005, and that he did not commence this action within three years of making his quasi-contract claim. USAA's position is that Appellant is owed no fees by USAA, under any theory, but even if he is, he commenced this action three years after the statute of limitations ran.

This case arises from a three-vehicle auto accident that occurred on Interstate 5 on September 11, 2002. The accident involved a truck and two cars. The truck struck Ms. Hanoch's car and pushed it into an adjoining lane, where it collided with a car being driven by Herman Carver. Ms. Hanoch was insured by USAA. A USAA claims representative, Arlys Reynolds, met with Ms. Hanoch on September 13,

2002. Mr. Woodley was retained by Ms. Hanoch to pursue her personal injury claim on September 25, 2002. Appellant has refused to produce his contingent fee contract, but one can assume it was a standard contract allowing for payment by a percentage of the recovery. This is borne out by Ms. Hanoch's testimony that she paid a contingent fee to Mr. Woodley.

This accident was investigated thoroughly by USAA long before the suit was filed. USAA assigned claim representative Arlyss Reynolds to the case. She met with Ms. Hanoch two days after the accident. Ms. Reynolds continued to investigate the accident, hired an accident reconstruction expert, took witness statements, and, in general, did her job as a claims adjuster. Mr. Woodley contacted no witnesses, took no statements, and did not even obtain copies of his client's medical records until December 2004. When the Carvers filed a lawsuit in September 2003, USAA assigned defense counsel, Alan J. Peizer, who appeared in the suit three days later. Mr. Woodley inquired about being retained by USAA, but his offer was declined.

Both Mr. Peizer and Mr. Woodley participated in this case. Mr. Peizer was paid by USAA and Mr. Woodley was paid by Ms. Hanoch when the case settled. Mr. Woodley was paid much more than Mr. Peizer. USAA paid for all the experts and other costs, even the one retained by Mr. Woodley.

In his role as defense counsel, Mr. Peizer persuaded the other parties to stipulate to a binding arbitration on the liability issue. Ms. Hanoch was found to be fault free in the arbitration, which occurred in December 2004. After obtaining dismissals of all claims against Ms. Hanoch, Mr. Peizer withdrew in February 2005. Ms. Hanoch eventually settled her claim against the operator of the truck for \$110,000. Mr. Woodley was paid one third of that recovery.

Mr. Woodley first made a claim for fees against USAA on January 30, 2005, by sending a bill to Ms. Hanoch. Mr. Woodley is not making a claim for his client, it is his own claim. He originally called this an "Account Stated," but later changed this to an account receivable, when faced with Summary Judgment. He has never pleaded an "account receivable." The remainder of his claim is based on claims of quantum meruit or quasi-contract. He has also claimed to be a third-party beneficiary of Ms. Hanoch's policy with USAA.

USAA has never agreed it owes Mr. Woodley anything. This lack of a contract disposes of any claim for an account stated or an account receivable. He has no standing to seek relief under Ms. Hanoch's insurance policy. Appellant is seeking to be paid twice for his representation of Ms. Hanoch. He apparently has no plans to reimburse his client for the fees he would recover from USAA if he is successful.

Mr. Woodley did not commence this lawsuit within the appropriate statute of limitations, which is three years under any theory pleaded in the Complaint or Amended Complaint. He is not insured by USAA and has no standing to raise any claims under Ms. Hanoch's USAA policy. The trial court was correct to dismiss this case on Summary Judgment.

II.
REPLY TO ASSIGNMENT OF ERROR

The Court was correct to dismiss Woodley's claim and deny the cross-motion for Summary Judgment. Mr. Woodley presented no evidence to establish a claim upon which relief could be granted and all possible claims were time barred.

III.
ISSUES PRESENTED

1. Did Appellant establish any contract between himself and USAA that could support an argument for an account stated or an account receivable?
2. Had the applicable statute of limitations run on all of Plaintiff's claims, regardless of their merit?
3. Is it possible for a someone representing a person insured by a policy of liability insurance to be a third-party beneficiary of the policy, merely for doing the task he was hired to do by the insured person?

**IV.
STATEMENT OF THE CASE**

This case arises from a three vehicle automobile accident that occurred on Interstate 5 on September 11, 2002. (CP 34) The accident involved a truck and trailer combination, owned and operated by Western Ports Transportation, Inc. The truck made an illegal lane change, struck Tara Hanoch's car, and caused it to cartwheel into the next lane, where it collided with a car being driven by Herman Carver. Ms. Hanoch and Mr. and Mrs. Carver were injured. (CP 36). Eventually, the Carvers commenced a lawsuit against the truck owner and its operator, and Ms. Hanoch. (CP 34) Ms. Hanoch cross-claimed against the truck owner and operator. That lawsuit is distinct from this case. It settled years before this case was commenced. (CP 32, 33, 42) The only parties to this action are Gordon Woodley and USAA Casualty Insurance Company. (USAA) USAA insured Ms. Hanoch, not Mr. Woodley. She has made no claim against USAA.

The appellant, Gordon Woodley, holds himself out as a plaintiff's personal injury attorney. He was retained by Ms. Hanoch to pursue her personal injury claim on September 25, 2002. (CP 412) Although he refused to produce a contract, he admitted that he represented Ms. Hanoch on a contingent fee basis, and the evidence shows that he was paid one-

third of Ms. Hanoch's \$110,000 settlement. (CP 33) Mr. Woodley admits that he was never hired by USAA to defend Ms. Hanoch. (CP 422) This case is an attempt to be paid by USAA for work that his client already paid for. Appellant apparently has no intention of refunding any fees to Ms. Hanoch if he is paid by USAA. (CP 422). Appellant also never sent a demand to USAA that they assign defense counsel before the lawsuit was commenced. (CP 422-423)

USAA conducted a thorough, aggressive investigation in this case prior to suit being filed. The claim diary is attached to the adjuster's declaration, CP 122-192). Arlys Reynolds, a USAA claims representative, visited Ms. Hanoch at her home on September 13, 2002, two days after the accident. (CP 118) After Appellant was retained to pursue Ms. Hanoch's personal injury claim, USAA assisted with Mr. Woodley's representation of Mrs. Hanoch, including the preservation of her vehicle so Mr. Woodley could have the car examined by an accident reconstruction expert. (See affidavit of Reynolds CP 120) Contrary to the allegation in Appellant's brief, the vehicle was stored, at USAA's expense, for many months. It was only released after clearance was obtained from Mr. Woodley. (CP 120) USAA also retained an accident reconstruction specialist to defend the claim. (CP 120-121). Prior to the suit being commenced in 2003, the USAA claims representative conducted a thorough investigation of this

case, including obtaining witness statements, obtaining photographs, hiring an accident reconstruction expert and locating an essential witness. (CP 118-120) In September 2003, prior to the commencement of the Carver lawsuit, USAA reimbursed Mr. Woodley and Ms. Hanoch for the cost of John Hunter, an accident reconstruction expert hired by Mr. Woodley.

In contrast to Ms. Reynolds, Appellant did virtually nothing to prepare his case. He did not even obtain his client's medical records until December 2004. (CP 358-360). He did not hire an investigator, took no witness statements, took no photographs, and spoke to no witnesses, not even his client's physician. (CP 420-421) He relied on USAA to conduct the investigation and to pay for the cost of preparing for the defense. Generally, one would expect an attorney representing a client on a personal injury case to be concerned about damages, so it is unusual that Appellant did nothing in this regard until the eve of trial. Mr. Woodley did not have to conduct an investigation because USAA did that for him.

On September 15, 2003, Mr. Carver filed suit in King County Superior Court. (CP 135) On September 22, 2003, Mr. Woodley accepted service for Ms. Hanoch and informed USAA of the suit. (CP 120) USAA immediately assigned the defense of the claim to attorney Alan J. Peizer. Mr. Peizer appeared in the suit on September 25, 2003. (CP 102-104) Mr.

Peizer is regularly retained by USAA to defend persons insured by USAA.
(CP 102)

Mr. Peizer and Mr. Woodley acted as co-counsel in the case. (CP 103)
The parties to the case agreed to bifurcate the case and to have a binding arbitration on liability, using JDR, a private mediation service. USAA paid Ms. Hanoch's share of the cost of arbitration. (CP 142) This arbitration occurred on December 17, 2004, before retired Judge Roselle Pekelis. Judge Pekelis issued her decision on December 20, 2004. (CP 40) She found that Ms. Hanoch was not negligent. (CP 40) The arbitration award was confirmed on January 23, 2005. (CP 87) This extinguished the claim against Ms. Hanoch, but left her free to pursue her personal injury claim against Western Ports Transportation, Inc. On February 11, 2005, Mr. Peizer filed a Notice of Intent to Withdraw. (CP 104) That event ended the involvement of USAA in the case.

Mr. Woodley first made a claim for fees on January 31, 2005, for "services rendered for liability only," in the amount of \$53,886.19. This was purportedly for work on the "liability" aspect of the case. This was a bill sent to Ms. Hanoch. (CP 53) USAA declined to pay the bill, since it never employed Mr. Woodley. Appellant admits that he was never employed by USAA. (CP 422) Appellant had asked Ms. Reynolds if

USAA was interested in retaining him, but his offer was declined. (CP 120)

Mr. Woodley commenced this action by serving the Insurance Commissioner on January 10, 2011, almost six years after he sent Ms. Hanoch a bill. His Complaint alleges several theories of recovery: account stated, unjust enrichment, and quantum meruit. It mentions a duty of good faith, even though Mr. Woodley was not insured by USAA in this action. (CP 1-5) The accounts receivable argument only appeared in opposition to a Motion for Summary Judgment.

It is uncontroverted that Mr. Woodley was neither employed by USAA nor was he a USAA insured, for the purpose of this claim. USAA never agreed to pay Mr. Woodley to represent Ms. Hanoch. It had no need for his services. Mr. Woodley and Ms. Hanoch benefited from the thorough and aggressive investigation by USAA before suit was filed and when the defense counsel retained by USAA was successful in having the claims against her dismissed. Mr. Woodley was paid for his efforts in obtaining a settlement by Ms. Hanoch. Appellant's claims are completely without merit and are time-barred. The trial court should be affirmed.

V.
ARGUMENT

A. Appellant was never employed by USAA.

Appellant is currently taking the position that his claim against USAA is an accounts receivable, and therefore subject to a six year statute of limitations. This is not what Mr. Woodley alleged when he brought this action. In his Complaint, entitled “COMPLAINT FOR ACCOUNT STATED ...” he stated that the debt allegedly owed by USAA was an “account stated.” (CP 1). Paragraph 11 of the Complaint states: “The invoice [of January 30, 2005] is evidence of an account stated.” (CP 2). This is also true in his Amended Complaint. (CP 4-5). Mr. Woodley never amended his Complaint. He has never pleaded that his claim is an accounts receivable. That claim first appeared in the response to the Motion for Summary Judgment in this matter. (CP 225) There is a significant difference between accounts receivable and an account stated, but they share one common factor; they cannot exist without a contract between the parties. *Tingey v. Haisch*, 159 Wn2d 652, 655, 152 P.3d 1020 (2007). One cannot unilaterally create an account receivable. There must be a contract. Appellant’s position is that he can unilaterally create an account receivable by sending a bill to someone who he admits

has not employed him. If this were true, a person could randomly send out bills to everyone in the phone book and claim they owed him money.

An “account stated” is derivative of a contract. It is not a contract itself. It is defined as follows: “An account stated is a mutual agreement as to the correct amount due from one party to another as a final adjustment of their mutual dealings to which the account relates. ... An account stated does not discharge any contractual duty and does not create a primary obligation, but is dependent on the existence of the previous liability.” 27 Washington Practice, §5.49. The existence of an account stated requires that the parties had a contractual relationship. That is absent in this case. It is not an independent cause of action. An account stated cannot be claimed for a debt whose existence is unknown. *Plywood Marketing Associates, Inc. v. Astoria Plywood Corporation*, 16 Wn. App. 556, 558 P.2d 283 (1971). An account stated is simply a way of saying that the parties agree on the existence of a debt and the amount of the debt arising from the contract. *Sunnyside Valley Irrigation District v. Roza*, 124 Wn.2d 312, 877 P.2d 283 (1998). This is not the case here. Mr. Woodley presented one bill, on January 31, 2005, and there has never been any agreement that he is owed money by USAA. He admits that he was never employed by USAA. A claim for an account stated is also subject to a three-year statute of limitations. *Tonken v Small*, 143 Wash.

126, 226 P. 1033 (1927). Mr. Woodley is claiming no work after January 30, 2005. He did not bring this action until almost six years after that.

RCW 4.14.040(2), dealing with accounts receivable, does not apply to this case. That statute applies to a debt for services pursuant to a contract. No contract means no accounts receivable. *Tingey v. Haisch*, 159 Wn2d 652, 655, 152 P.3d 1020 (2007). In the *Tingey* case, the plaintiff attorney was hired by a client to perform hourly work on a verbal contract. The opinion emphasizes that it only applies to cases in which there is a contract between the plaintiff and defendant.

However, our definition of “account receivable” is considerably more narrow than the dissent represents. Our definition identifies the parties to the contract (a customer and a business) and the character of the transaction (a purchase by the customer). It requires the business to have completed performance (customer has bought or received the merchandise or services). It specifies the monetary nature of the remaining obligation (an amount due). Only oral contracts exhibiting all of these characteristics garner the account receivable six-year limitation.

Tingey, Supra at 659-660. Appellant admits he has no contract with USAA upon which to base an accounts receivable. An account receivable is just a way of keeping track of an acknowledge debt, based on a contract. Appellant admits that he had no contract, and USAA has vigorously denied it owes any money to Appellant. Mr. Woodley’s attempt to extend

(3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

This statute has been held to apply to claims of quantum meruit and unjust enrichment. *Geranios v. Annex Investments*, 45 Wn.2d. 233, 235, 273 P2d 793 (1954), *Eckert v. Skagit Corp.*, 20 Wn. App. 849, 850-851, 583 P.2d 1239 (1978).

Neither is this a case of “accounts receivable,” governed by RCW 4.14.040(2). That section applies to a debt for services pursuant to a contract. *Tingey v. Haisch*, 159 Wn2d 652, 655, 152 P.3d 1020 (2007). In the *Tingey* case, the plaintiff attorney was hired by a client to perform hourly work on a verbal contract. The opinion emphasizes that it only applies to cases in which there is a contract between the plaintiff and defendant.

If Appellant had a viable cause of action, it accrued no later than January 30, 2005. The time to bring that action expired on January 30, 2008. This action was filed three years too late. It should be dismissed.

C. Appellant's claims for unjust enrichment and quantum meruit fail to state a claim upon which relief may be granted.

Quantum meruit and unjust enrichment are essentially the same thing. They have been referred to as "inseparable." *Farwest Steel v. Mainline Metal Works, Inc.*, 48 Wn. App. 719, 731, 741 P.2d 58 (1987). Both are based on the absence of an express contract between the parties. *Chandler v. Washington Toll Bridge Authority*, 17 Wash.2d 591, 604, 137 P.2d 97 (1943). In cases in which attorneys are seeking fees, it usually involves an attorney who has a contract with a client and is fired, pursuant to the contract. *Barr v. Day*, 124 Wn.2d 318, 879 P.2d 912 (1994), is an example of this type of scenario. Mr. Barr represented the plaintiff's late husband in a personal injury action. He had a written contingent fee contract, but was fired by the client before the case settled. The Court held, at 329-330, that once fired, Mr. Day could only recover in quantum meruit for the services he performed. The general idea is to prevent plaintiffs from firing their attorneys once a settlement has been reached and evading the payment of a fee. The elements required in that case have no relation to the admitted facts of this case. USAA specifically declined to hire Mr. Woodley. He does not allege a contract ever existed.

Unjust enrichment usually involves one person unfairly getting the services of another, in an unjust manner. USAA hired defense counsel,

Mr. Peizer, to protect Ms. Hanoch. This was done three days after Mr. Carver filed suit. Mr. Peizer was successful in getting this claim dismissed. Mr. Woodley had a duty, pursuant to his contract with Ms. Hanoch, to prove that the owners and operators of the truck involved were liable to Ms. Hanoch for their negligence. He did nothing in this case that he would not have done, even if Mr. Carver had not sued Ms. Hanoch.

The doctrine of unjust enrichment requires that one person enrich himself at the expense of another. USAA's defense benefited Ms. Hanoch. It cost her nothing. The doctrine of unjust enrichment is discussed in *Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 576, 161 P.3d 473 (2007):

Quasi contracts, or contracts implied by law, are founded on the equitable principle of unjust enrichment that one should not be "unjustly enriched at the expense of another." *Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 165, 776 P.2d 681 (1989) (quoting *Milone & Ticcu, Inc. v. Bona Fide Builders, Inc.*, 49 Wn.2d 363, 367, 301 P.2d 759 (1956)). A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity. *Farwest Steel Corp. v. Mainline Metal Works, Inc.*, 48 Wn. App. 719, 731-32, 741 P.2d 58 (1987). Enrichment alone will not trigger the doctrine; the enrichment must be unjust under the circumstances and as between the two parties to the transaction. *Farwest*, 48 Wn. App. at 732. Three elements must be established for unjust enrichment: (1) there must be a benefit conferred on one party by another; (2) the party receiving the benefit must have an appreciation or knowledge of the benefit; and (3) the receiving party must accept or retain the benefit under circumstances that make it inequitable for the receiving

party to retain the benefit without paying its value. *Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.*, 61 Wn. App. 151, 159-60, 810 P.2d 12 (1991)

Appellant's efforts were presumably for the benefit of his client, Ms. Hanoch, not USAA. USAA gained nothing from them; they conducted their own investigation and hired experienced defense counsel to protect Ms. Hanoch. USAA also reimbursed Mr. Woodley and Ms. Hanoch for the costs they advanced to an expert. Appellant is trying to be paid twice for the same work. He has not alleged that he is acting for Ms. Hanoch or that he would refund any money to Ms. Hanoch, should he recover in this action. He has not alleged, nor does he have standing to allege a claim for Ms. Hanoch. Mr. Woodley has no claim for unjust enrichment or quantum meruit against USAA.

D. Appellant lacks standing to make a bad faith claim.

Appellant alleges, at paragraph 13 of his complaint, that USAA has violated a duty of good faith imposed by RCW 48.01.030. (CP3) Mr. Woodley is not insured by USAA. USAA's involvement is based on defending a claim against Ms. Hanoch. Ms. Hanoch is not a party to this action. Mr. Woodley, as a third-party claimant, has no standing to make a claim of bad faith against USAA. *Tank v. State Farm Insurance*, 105 Wn.2d 381, 715 P.2d 1133 (1986). Bad faith claims and claims of violations of the insurance law can only be brought by an insured or the

State Insurance Commissioner. *Neigel v. Harrell*, 82 Wn. App. 782, 919 P.2d 630 (1996). Also, bad faith claims are tort claims and would be subject to a three-year statute of limitations, RCW 4.16.080(2). Like all of Appellant's claims, this is time barred.

Mr. Woodley's claim that he is a third-party beneficiary of the insurance contract between Ms. Hanoch and USAA is unsupported by law or fact. This is convoluted argument that seems to lack a logical basis. He cites no authority for the proposition that the personal attorney of a person who enters into a contract of insurance could be a third-party beneficiary. This argument shows a misunderstanding of the concept of third-party beneficiary. Washington law does not recognize third-party beneficiaries of insurance contracts. Appellant has no standing to make a claim of bad faith against USAA. *Tank v. State Farm Insurance*, 105 Wn.2d 381, 715 P.2d 1133 (1986). Appellant's argument seems to be that USAA should have appointed counsel as soon as the accident occurred. However, he admits that he never demanded that USAA appoint defense counsel. (CP 423-424) In any case, that claim could only be asserted by Ms. Hanoch. USAA had no need for Mr. Woodley's services and expressly declined to employ him. The case was competently investigated by USAA before suit and defended by USAA once suit was

filed. Appellant's job was to recover damages for Ms. Hanoch's personal injury.

Appellant cites *Moratti ex rel. Tarutis v. Farmers Ins. Co. of Washington*, 162 Wn. App. 495, 254 P.3d 939 (2011) in support of his argument. *Moratti* is a suit by a first party claimant, the insured. It does not stand for the proposition that defense counsel must be appointed the day after the occurrence. It also does not apply to third-party claims. Mr. Woodley has no standing under the insurance contract.

In order to be a third-party beneficiary to a contract, the contracting parties must intend that the third-party benefits, when they enter into the contract. This is discussed in 25 Washington Practice § 12.1:

It is generally presumed that parties contract for their own benefit and not for the benefit of a third-party. However, the presumption is rebuttable based on proof that the parties entered into the contract with the intent to benefit a third-party, resulting in the creation of a third-party beneficiary contract. The creation of a third-party beneficiary contract requires that the parties intend that the promisor assume a direct obligation to the intended beneficiary at the time they enter into the contract. Thus, both contracting parties must intend that a third- beneficiary party contract be created. It is not essential to the creation of a right in an intended beneficiary that he be identified when the contract is made, but only that the requisite intent exist. [Citations omitted].

There is no evidence that USAA and Ms. Hanoch intended to benefit Mr. Woodley. USAA had a duty to Ms. Hanoch to investigate and defend the claim brought against her in this case. It is uncontroverted that it performed this duty. USAA did not need or request Mr. Woodley's assistance. The only person who has a right to even raise this issue is Ms. Hanoch, the insured. Appellant has no standing to bring a bad faith claim, or any claim under Ms. Hanoch's policy of insurance, against USAA.

Bad faith claims are tort claims. *Safeco Insurance Co. v. Butler*, 118 Wn.2d 3838, 389, 823 P.2d 499 (1992). Tort claims are governed by RCW 4.16.080(2), the three-year statute of limitations. Even if Mr. Woodley had standing to bring the claim, he filed this lawsuit three years after the expiration of the statute of limitations.

E. Appellant lacks standing to bring a claim for fees.

Appellant cites *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991) as the basis for fees. That case holds that, if the insured is required to sue the insurer to obtain coverage, fees should be awarded. It has no application here, where USAA immediately investigated and later successfully defended the insured. That case dealt with a claim by an insured, not the insured's attorney. Mr. Woodley has no standing to make this claim. See *Tank, supra*. Mr. Woodley's assertion that USAA failed to defend the case is also

unfounded. USAA was involved of the defense of its insured within two days of the accident. The claims representative, unlike Appellant, undertook a diligent investigation, gathered evidence to use in the defense of the case, and retained defense experts. Defense counsel was appointed within three days of the commencement of the lawsuit against Ms. Hanoch. That defense counsel successfully defended the claim, using the facts and witnesses discovered in the investigation. Appellant has already been paid for his work for Ms. Hanoch. He is not seeking to recover money for Ms. Hanoch. He seeks to be paid twice, and has no plans to reimburse his client. Appellant is not a party to the insurance contract, and he has no standing to assert any claim based on that contract. His claim to be a third-party beneficiary is absurd. He has no right to attorney fees under any theory.

VI. CONCLUSION

The trial court had several good reasons to dismiss this lawsuit. Even if the absurd claims being made by Appellant had merit, he filed the lawsuit three years too late. The claims are obviously time barred. When this became apparent, Appellant attempted to change his claim of an account stated into an account receivable, in the hope of finding a longer statute of limitations. Appellant's admission that he was never employed

by USAA means that his claim is neither an account stated nor an account receivable. Both theories require that there be an agreement that money is owed to the person making the claim. USAA never hired Mr. Woodley, did not need his services, and never incurred any debt to him. On the contrary, they did most of the work he was hired to do by Ms. Hanoch.

Appellant's quasi contract claims also lack merit and they are inconsistent with his contract claim. These claims also lack merit, because Mr. Woodley's services did not benefit USAA. The defense of Ms. Hanoch was brought to a successful conclusion due to the competent investigation of Ms. Reynolds and the efforts of defense counsel Mr. Peizer. The argument that USAA should have appointed defense counsel as soon as the accident occurred is unsupported by law or logic. Until the lawsuit was filed there was nothing to defend. The pre-suit investigation was conducted by Ms. Reynolds, who located witnesses and evidence, retained experts and provided the means to defend the case once suit was filed. Mr. Woodley, who was supposed to be handling Ms. Hanoch's personal injury claims, did not even obtain his own client's medical records until two years after the accident. Like all his other claims, Mr. Woodley filed these claims three years too late.

Appellant's claims that USAA acted in bad faith and that he should receive fees are completely without merit. He has no standing to bring these claims and, even if he did, he filed them three years to late.

Appellant is seeking to recover for himself, not his client. Ms. Hanoch is making no claim in this case. If he does persuade the Court to award him fees for his work on Ms. Hanoch's behalf, he is not planning to reimburse her for any of the fees she has paid him. His claims are entirely self-serving.

The trial court correctly dismissed these bizarre claims. All Mr. Woodley's claims fail to state a basis for recovery and all are barred by the Statute of Limitations. The trial court should be affirmed.

Respectfully submitted this 26th day of July, 2012.

WALL & LIEBERT P.S.



GREGORY J. WALL
WSBA 8604
1521 SE Piperberry Way
Suite 102
Port Orchard, WA 98366
Attorney for Respondent